databases and personnel was integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC,"[1] and, therefore, affected compliance with other items of the competitive checklist.[2]

In its orders on earlier petitions for interLATA entry, the FCC set forth the legal standard by which to evaluate whether a BOC's deployment of OSS was sufficient to satisfy this checklist item.[3] First, a BOC must deploy the necessary systems and personnel to provide sufficient access to each of the "necessary" OSS functions and "adequately assist" competing carriers to understand how to implement and use all of the OSS functions available to them.[4] "[A]ll of the automated and manual processes a BOC has undertaken to provide access to OSS functions" will be considered.[5] Second, the OSS functions that the BOC has deployed must be operationally ready, as a practical matter."[6] The FCC has stated it will

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1 Second BellSouth Louisiana Order ¶83.

2 Id. ¶83; Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-298, Memorandum Opinion and Order (August 19, 1997)(Ameritech Michigan Order) ¶¶131-132.

3 Application of BellSouth Telecommunications, Inc. et al for Provision of In-Region InterLATA Services in South Carolina, CC Docket 97-418, Memorandum Opinion and Order (December 24, 1997)(Bell South South Carolina Order) ¶¶96-100; Application of BellSouth Corporation, et al, Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 98-17, Memorandum Opinion and Order (February 4, 1998) (First BellSouth Louisiana Order) ¶¶20-21.

4 Ameritech Michigan Order ¶136.

5 Id. ¶132.

6 Id. ¶136.

examine performance measurements associated with actual commercial usage, carrier-to-carrier testing, independent third-party testing, and internal testing in order to evaluate commercial readiness.[1] In the case of functions that have retail analogues, the access offered to competing carriers, should be equivalent to the access that the BOC provides itself.[2] For those OSS functions that have no retail analogues, access should be "sufficient to allow an efficient competitor a meaningful opportunity to compete."[3]

C. State Application of Legal Standards

1. Bell Atlantic-NY Commitments

Building on collaborative efforts to set standards and rules for OSS, Bell Atlantic-NY's April 6, 1998 Pre-Filing Statement set forth additional commitments and measures to ensure that its OSS were fully available in accordance with the §271 checklist.[4] The Pre-Filing

1 BellSouth South Carolina Order ¶97; Ameritech Michigan Order ¶¶111-119.

2 Ameritech Michigan Order ¶138.

3 Second BellSouth Louisiana Order ¶87, citing Ameritech Michigan Order ¶139; Local Competition First Report and Order ¶516; and Local Competition Second Reconsideration Order ¶5 and Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, (December 13, 1996)(Local Competition Second Reconsideration Order), ¶5.

4 Pre-Filing Statement of Bell Atlantic-NY (April 6, 1998), BA-NY Application, Appdx. C, Vol. 28, Tab 403, pp. 28-34.

Statement set forth Bell Atlantic-NY commitments in several key areas: standards, testing and ongoing verification.[1]

Bell Atlantic-NY committed to make electronic OSS access available for pre-ordering, ordering, provisioning, maintenance and repair, and billing for all CLECs.[2] The Pre-Filing Statement required Bell Atlantic-NY to make the OSS pre-ordering and ordering functions "fully integratable,"[3] so competitors could efficiently integrate customer data obtained through Bell Atlantic's pre-ordering system into an order to be submitted back through the OSS interface to Bell Atlantic-NY. As part of the "fully integratable" commitment, Bell Atlantic-NY agreed to provide a structured, formatted customer service record (CSR) and agreed to provide, to both the independent test consultant (KPMG) and the CLECs themselves, the information needed to permit the CSR information to be parsed or fielded.

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1 The July 1997 Ruling Concerning the Status of the Record found that until electronic interfaces were more widely available, competitors would be unable to obtain parity access to Bell Atlantic-NY's OSS. Following the July 1997 Ruling, in response to a request from several parties in October 1997, the NYDPS convened the collaborative process previously used in Cases 95-C-0657 et al., to address issues related to the development of OSS interfaces and systems for network elements and managing changes to these interfaces. Following six months of in-depth collaborative sessions, the parties filed with the NYDPS a substantial set of agreements on business and EDI rules for the ordering of network elements and an agreement governing how changes to the OSS interface would be managed and implemented. A further collaborative was conducted to address OSS interfaces and systems for pre-ordering.

2 The access to be made available included application-to-application interfaces for pre-ordering and ordering, and, as an alternative, a graphical user interface (GUI) for pre-ordering, ordering, and maintenance and repair. Pre-Filing Statement of Bell Atlantic-NY, Id., pp. 28-32.

3 Id.

With regard to the development of an application-to-application ordering interface, Bell Atlantic-NY committed itself to implementing an EDI Version 8/ANSI 3072 standard interface. With respect to maintenance and repair, Bell Atlantic-NY undertook to continue to provide access to these functions through Retail Trouble Administration System (RETAS) and through its EIF application-to-application interface, and to demonstrate through the third party test that those systems could handle and process reasonably foreseeable volumes in a non-discriminatory manner.[1]

Bell Atlantic-NY agreed to provide all necessary technical support to enable CLECs to build their OSS interfaces and implement and use the OSS functionality. This support included technical reference manuals and user guides, system specifications and documentation, and formatting and processing information, including updates of all appropriate documentation. Bell Atlantic-NY further committed itself to providing technical support and establishing a change management process for dealing with changes to the OSS interfaces. When an OSS interface or system was to be updated or replaced, Bell Atlantic-NY would maintain backward compatibility for a "commercially reasonable period of time," as established by the change management process or the New York Commission.[2] Bell Atlantic-NY undertook to accommodate reasonably foreseeable transaction quantities and to

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1 As there were no existing national standards for maintenance and repair interfaces at the time, Bell Atlantic-NY undertook to implement any forthcoming industry standards within 180 days of their adoption. Id. p. 30.

2 Id. pp. 29-30.

scale its systems and support processes to meet increases in demand over time.[1] Bell Atlantic-NY agreed to provide CLECs functionality equivalent to that provided to its own retail representatives, and to provide order flow-through of those order types listed in the Pre-Filing Statement, Appendix 2 and 3, and additional order types that the third party test consultant determined would be necessary and material to the CLECs' ability to compete.[2] Bell Atlantic-NY further undertook to continue to modify its OSS in order to flow-through all but the least frequently requested types of orders at rates that are at parity with those analogous orders in Bell Atlantic-NY's own retail operations.[3]

In order to demonstrate that all of the OSS standards were being met, Bell Atlantic-NY agreed to institute the performance measures required by the New York Commission and to demonstrate its capability to generate performance reports.

2. Testing

Bell Atlantic-NY agreed to demonstrate its compliance with all of the standards and requirements for its OSS systems through actual performance data obtained from commercial usage and through an independent third party test conducted under the supervision of the NYDPS Staff. Although Bell Atlantic-NY agreed to pay the costs of the third party test, the

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1 Id.

2 Id., p. 31.

3 Id. "Flow-through" was defined as the process by which orders could be received electronically from CLECs through the ordering interface in a manner that required no manual entry before being entered into the service order processor.

consultants reported directly to DPS Staff and had no reporting relationship with Bell Atlantic-NY.

The objective of the test was not to measure Bell Atlantic-NY's OSS performance at any particular point in time, but to ensure that Bell Atlantic-NY developed its OSS systems sufficiently to make them fully available to competitors and to provide competitors with a meaningful opportunity to compete. Therefore, it was agreed that Bell Atlantic-NY would have an opportunity to correct any deficiencies or defects discovered during the testing process and continue testing until the OSS had been proven to work.[1] Thus, the "snapshot" approach to the test was rejected in favor of an on-going evaluation or "military test"--that is, test until you pass, which, in the final analysis, would result in a fully operational OSS.

Pursuant to the RFP, issued by the NYDPS on March 6, 1998,[2] KPMG Peat Marwick (KPMG) was selected as the independent third party test manager to operate under the sole direction and control of NYDPS Staff.[3] KPMG, Bell Atlantic-NY and the Department of Public Service executed a three-party contract on April 28, 1998. The April 28 contract was for Phase 1 of the OSS test and provided that KPMG would draft a master test plan outlining the actual test methodology and process, and that a second RFP would be issued for the

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[1] Id., pp. 33-34.

[2] The RFP was drafted in concert with staff from the Department of Justice.

[3] Following release of the RFP, attached to the Pre-Filing Statement as Appendix 4, NYDPS reviewed proposals from several consultants, held informational meetings with interested bidders, and conducted joint interviews with the Department of Justice of several finalists. In the DPS analysis of the actual bids received in response to the RFP, KPMG Peat Marwick scored significantly higher than the other bidders, and was selected by the NYPSC on April 22, 1998.

CLEC test transaction generator (CTTG), who would build the CLEC side of an OSS interface for the test.

Pursuant to an RFP issued on May 15, 1998, Hewlett Packard was selected as the CLEC test transaction generator.[1] Hewlett Packard and Bell Atlantic-NY executed a contract on August 12, 1998, which provided that Hewlett Packard would act as a test consultant under the sole direction and control of the DPS Staff and would have no reporting relationship with Bell Atlantic-NY.[2] Hewlett Packard's role in the test process was to act as the CLEC interface and actual transaction generator, acting under the direction of test manager KPMG Peat Marwick.

Neither KPMG nor Hewlett Packard had a reporting relationship to Bell Atlantic-NY.

KPMG developed a Master Test Plan based on input from DPS, Bell Atlantic-NY, and competitive carriers. The Master Test Plan was designed to provide end-to-end coverage of the OSS systems, interfaces, and processes, and consisted of extensive transaction-driven system analysis and operational analysis. Transaction testing consisted of 132 different test

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1 Following release of the CTTG RFP, informational meetings were held with interested parties, proposals were received, and finalist interviews held. Hewlett Packard was selected from among those submitting proposals based upon its known experience in the telecommunications industry as well as its demonstrated capability to meet the requirements of the test and its ability to adapt to the circumstances of the test process.

2 The provisions of the New York State Public Service Law relating to selection of management audit consultants [PSL §96(6)(b)] prevented the Department from being a party to the Hewlett Packard contract. Although the Department of Public Service could not be a party to the Hewlett Packard/Bell Atlantic-NY contract, BA-NY, Hewlett Packard, and Department staff negotiated the terms of the contract.

transaction scenarios[1] designed to evaluate pre-ordering, ordering, provisioning, maintenance and repair, and billing systems under reasonably foreseeable normal volumes as well as higher volumes for certain transactions.

II. The NYPSC Record

A. Overview

Bell Atlantic-NY, pointing to its extensive real-world experience and the results of the KPMG third-party test, claims that it provides CLECs access to the various items on the checklist through industry-leading Operations Support Systems that are in place, fully operational and already handling massive commercial volumes.[2]

The KPMG test of the readiness of Bell Atlantic-NY's OSS interfaces, documentation, and processes to support local market entry by the CLECs demonstrates Bell Atlantic-NY's ability to handle a broad array of resale, unbundled network elements, unbundled network element platform and combination orders at reasonably foreseeable volumes in a nondiscriminatory manner. KPMG's evaluation spanned four areas or domains that roughly correspond to a customer's account life cycle. These areas are Pre-Ordering, Ordering, and Provisioning (POP); Maintenance and Repair (M&R); Billing (BLG); and Relationship Management and Infrastructure (RMI). KPMG's evaluation included transaction-driven testing that was designed to have the third-party "live the CLEC experience" and operational tests

1 The scenarios described real world ordering parameters such as products, sequences, errors, and troubles, with many variations. These became the basis for developing the test case transactions.

2 BA-NY Application, p. 37.

designed to evaluate Bell Atlantic-NY's day-to-day operations and operational management practices, policies, and procedures. KPMG established numerous criteria to evaluate testing results. The criteria included measures identified by the New York Commission (Interim Guidelines from the Carrier-to-Carrier Service Standards Proceeding) and others based on KPMG's professional judgment. The results fell into the following categories:

Satisfied. The evaluation criterion was satisfied.

Satisfied, with Qualifications. The evaluation criterion was satisfied; however, specific areas might need improvement.

Not Satisfied. The evaluation criterion was not satisfied, and issues were identified that would have a business impact on CLECs. In some cases an exception was raised.[1]

Satisfied, Exception Resolved. The evaluation criterion was not initially satisfied, an exception was raised, Bell Atlantic-NY changes were made, and the criterion was subsequently satisfied.

Satisfied, with Qualifications, Exception Addressed. The evaluation criterion was not initially satisfied, an exception was raised, Bell Atlantic-NY made changes and the criterion was subsequently satisfied, with qualifications.

As issues were identified in KPMG's testing, solutions were developed, and in many cases the solutions were subject to further review and testing by KPMG. The results of KPMG's testing, as well as actual commercial experience, are reviewed below, following KPMG's four-domain organization.

[1] To bring certain issues to the attention of Bell Atlantic-NY, New York Commission and CLECs, "Exceptions" were issued by KPMG with respect to various evaluation criteria where unexpected results were found.

B. Pre-Ordering, Ordering, Provisioning Domain

The pre-ordering, ordering and provisioning (POP) domain contains many components essential for CLEC market entry. Pre-ordering involves the (CLECs') ability to obtain customer information as well as product and service availability from Bell Atlantic-NY during the period in which a CLEC is attempting to sell its services to customers. Ordering involves the transmission of CLEC orders to Bell Atlantic-NY, as well as the confirmation or rejection of those orders. Provisioning involves OSS functions relating to the execution by Bell Atlantic-NY of the orders received from the CLECs.

The KPMG POP evaluation included 13 separate tests, and ten primary Test Target Areas:

Pre-ordering
Order Processing
Provisioning
Order Flow Through
Bell Atlantic-NY POP Metrics
POP Documentation
Work Center/Help Desk Support
Provisioning Process Parity
Provisioning Coordination Process
Scalability Review

1. Pre-Ordering Overview

Bell Atlantic-NY provides access to pre-ordering information through two electronic interfaces and is currently testing a third. Bell Atlantic-NY offers an application-to-application pre-order interface using the EDI-9 standard and a graphical user interface (GUI). A third interface, using Common Object Request Broker Architecture (CORBA) was ordered by the New York Commission and is currently undergoing testing with one CLEC.[1] The EDI and CORBA interfaces are more suitable to high volume transactions, while the GUI is used by smaller competitors and for certain specialized transactions.

For EDI, KPMG conducted a functional evaluation, as well as volume tests. The functional evaluation tested whether the appropriate functionality was available via the interface. The volume tests then evaluated whether the interface functioned properly under "normal" and "peak" loads.[2] KPMG notes, however, that it failed to account for the existing Bell Atlantic-NY workload when determining what volumes to submit and that the Bell Atlantic-NY system was therefore stressed more than intended; the result is that the normal day is "more representative of a peak day, and that the peak day is more representative of stress day when viewed in the context of December 1999 volumes."[3]

Bell Atlantic-NY's performance in the pre-ordering domain was analyzed with reference to both actual commercial usage and the results of the KPMG evaluation. KPMG thoroughly evaluated the EDI Pre-order interface, covering a "broad range of options available to CLECs and resellers."[4] Performance in the pre-ordering area is measured by the

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1 Case 97-C-0271, Order Modifying CORBA Pre-order Testing Schedule, (July 14, 1999), BA-NY Application, Appdx. C, Vol. 53, Tab 834.

2 Normal volumes were designed to approximate projected year-end 1999 volumes, while peak was 150% of normal. See KPMG Final Report Version 2.0 (August 6, 1999), BA-NY application, Appdx. C, Vols. 60 a-c, Tab 916, p. 102 for precise transaction volumes.

3 Id., p. IV-108.

4 Id., p. III-3.

availability of information, the timeliness of responses to pre-ordering inquiries, and access to and availability of the interfaces.

2. Pre-Order Functionality

KPMG found that Bell Atlantic-NY's system provides required pre-order functionality.[1] KPMG submitted more than 3,000 pre-order transactions during the functional evaluation and nearly 24,000 transactions during the volume test, receiving responses for nearly 100% of the pre-order transactions during the functional evaluation and 90% of the pre-order transactions during the volume test.[2]

3. Pre-Order Response Times

Bell Atlantic-NY provides, among other pre-order functions, access to customer service records (CSR), due date availability (DDR), address validation (ADR), product and service availability, telephone number availability and reservation, and facility availability for loop qualification. Bell Atlantic-NY's response time to inquiries in each of these discrete areas is measured by comparison to the response times experienced by Bell Atlantic-NY's retail representatives. In the New York Commission's carrier-to-carrier collaborative, the competitors and Bell Atlantic-NY agreed that the appropriate standard for response time for CLEC inquiries is "parity plus four seconds;" that is, the response times experienced by competitors should be equal to the response times experienced by Bell Atlantic-NY retail personnel, plus an additional four seconds to account for security measures and computer

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1 KPMG Final Report Version 2.0 (August 6, 1999) BA-NY Application, Appdx. C. Vols. 60 a-c, Tab 916, p. IV-106 (POP5 Evaluation Criteria, Test Cross Reference P5-2).

2 Id., p. IV-106.

translations. The response times reported by Bell Atlantic-NY for the last several months, for all of the transactions listed above, have all been within this parity-plus-four-second range.[1]

Several parties raised concerns about the way Bell Atlantic-NY measures pre-order response times,[2] a concern the NYDPS staff shared. Although Bell Atlantic-NY offers the EDI interface for pre-ordering, the company was, until recently, measuring and reporting the response times provided by its older EIF interface. At the request of NYDPS staff, and in response to the concerns raised by the parties, Bell Atlantic-NY has changed the way it measures pre-order response times to include firewall and translation time.[3] The August results reflect implementation of the first part of the changes in measurement practices, which will more accurately capture pre-order.[4]

KPMG evaluated several transactions in addition to those noted above, including installation status inquiry, service order status inquiry (from the Service Order Processor

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1 The sole exception to this statement occurred with regard to the customer service record (CSR) response time for August 1999, in which the reported result exceeded BA-NY's retail response time by roughly five seconds, or one second longer than the standard.

2 AT&T's Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 952, p.6. ". . . [response times] reflect only the pre-ordering response times on its EIF system -- not on EDI (footnote omitted)".); MCI WorldCom's Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 946, p.9 "BA-NY is expected to begin reporting its pre-order response times for EDI in September".

3 Dowell/Canny Declaration, BA-NY Application, Appdx. A, Vol. 1, Tab 3, p. 11.

4 The remaining changes were implemented in September 1999. Additional refinements to these pre-order measurements, raised by the parties more recently, are being considered in the carrier-to-carrier proceeding, Case 97-C-0139.

(SOP)), and channel facility inquiry.[1] KPMG reported that the GUI provided responses in a satisfactory interval.[2] With regard to the EDI interface, KPMG found the criteria Satisfied, with Qualification.[3] At normal day volumes,[4] KPMG found that Bell Atlantic-NY returned CSRs and DDRs well within expected time frames (parity plus four seconds, as established in the carrier-to-carrier proceeding), and that 86% of the response times for ADRs were under 10 seconds.

Bell Atlantic-NY included, as part of its Second July 1999 Update Affidavit, an exhibit outlining the steps the company is taking to ensure that its response times remain adequate as volumes increase.[5] Based on the record established, and including cross-examination of Bell Atlantic-NY at the July 1999 technical conference,[6] we conclude that Bell Atlantic-NY is taking appropriate steps to ensure the scalability of its Pre-ordering interface.

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1 KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. III-2.

2 Id., p. IV-35.

3 Evaluation criteria P5-3: "Bell Atlantic-NY system as representative provides pre-order responses in agreed upon time frame."

4 As noted earlier, these intended "normal volumes" were really more representative of "peak" volumes. KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-108.

5 BA-NY Second July Update Affidavit (July 22, 1999), BA-NY Application, Appdx. C, Vol. 54, Tab 853, Exhibit VV.

6 Transcript at 3431-3446. Minutes of Technical Conference Held July 27, 1999, BA-NY Application, Appdx. C, Vol. 57, Tab 882, Transcript pp. 3431-3446.

4. Interface Availability

Bell Atlantic-NY's OSS must remain accessible, or "open for business," during scheduled hours of operation. In this regard, Bell Atlantic-NY's performance is measured primarily by metric number PO-2-02-2000, "OSS Availability During Prime Time." Bell Atlantic-NY reports 100% availability for the months of June, July, and August, 1999 on this metric. KPMG found that this criterion (P5-1) was Satisfied, with Qualifications, recognizing that connectivity and outage issues could be further improved. Occasionally, connectivity was interrupted and "system unavailability" messages were received, but KPMG determined that the system was generally available and the criterion satisfied.[1]

In light of the results of the KPMG evaluation, and the reported results, we conclude that Bell Atlantic-NY is providing access to appropriate pre-order functionality, adequate response times and satisfactory interface availability.

5. Ordering

Bell Atlantic-NY provides two electronic OSS interfaces for ordering, and accepts manual ("fax") submission as well. The two electronic interfaces are an application-to-application ordering interface using EDI-8, and a graphical user interface (GUI). Several competitors use the EDI ordering interface; many more carriers use the GUI.

a. Order confirmations and rejections

Once orders are submitted to the OSS, Bell Atlantic-NY responds with either a Local Service Request Confirmation/Firm Order Confirmation (LSRC or FOC) or an LSR rejection.

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[1] KPMG Final Report Version 2.0 (August 6, 1999) BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-106.

The LSRC/FOC confirms that the order has been received by Bell Atlantic-NY, and is returned to the CLEC. The LSRC will be returned electronically if the order is of the type that flows through Bell Atlantic-NY's interface. The LSRC will be processed manually if the order is either a non-flow-through type or drops out of the flow-through system.[1] Bell Atlantic-NY's performance in this area is measured by a host of carrier-to-carrier metrics, and was evaluated by KPMG as well.

Since there is no retail analogue in Bell Atlantic-NY's retail system, ordering metrics are "absolute standard" metrics. The target standard was set at 95% on time, for both LSRCs and LSR rejections.[2] A secondary target of 90% on time was established in the Performance Assurance Plan.

Several parties have raised issues with respect to the timeliness and accuracy of BA-NY's order confirmations.[3]

The significant measures in this area relate to Bell Atlantic-NY's ability to confirm or reject flow-through LSRs in a timely manner, as these account for the vast majority of CLEC ordering volumes. In August, for example, 60.4% of LSRCs returned were flow-through

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1 An order may drop out for manual processing for one of several reasons, as discussed in a subsequent section.

2 Orders that flow through the system must be either confirmed or rejected within two hours; orders processed manually must be either confirmed or rejected within 24, 48 or 72 hours, depending on order type. Dowell/Canny Declaration, BA-NY Application, Appdx. A, Vol. 1, Tab 3, Attachment B (New York State Carrier-to-Carrier Guidelines Performance Standards and Report).

3 AT&T's Brief (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 952, pp. 8,9; NEXTLINK's Brief and Request for Time to Present Oral Argument (August 17, 1999), BA-NY Application, Appdx. C, Vol. 62, Tab 948, p. 4.

orders and 55% of rejections were on a flow through basis. Bell Atlantic-NY reports that its on time performance for confirming flow-through LSRs was 97% and 99%, and that its performance in rejecting flow-through LSRs was 87% and 94%, in July and August, 1999, respectively.

For manually processed LSRs (i.e., non-flow-through orders), Bell Atlantic-NY's reported performance in returning LSRCs and LSR rejections on time has been somewhat lower, but increasing. August performance for confirmations on smaller mass market type orders ("Plain Old Telephone Service" (POTS); ten lines or less) was roughly 88%, only slightly below the secondary target. For rejections of similar orders the company's performance for August was 83% on time. Since only a small portion of the total orders were manually rejected in August, Bell Atlantic-NY's performance only resulted in about 450 orders--less than 1% of all orders processed in August--receiving late rejection notices. The other areas where the company's manually processed orders did not meet targets also represent a relatively small portion of CLEC orders--about 600 orders in total.[1] For high volume transactions Bell Atlantic-NY's performance is at or near the targets.

To ensure that the positive ordering performance trend continues, Bell Atlantic-NY has agreed to two additional monetary incentives. First, Bell Atlantic-NY has agreed to subject each of four LSRC and LSR rejection performance measures, for manually processed POTS

[1] These measures, along with performance results and number of transactions for August 1999, are: (1) OR-1-04-3200-% On Time<10 lines-Specials (68%; 311 orders), (2) OR-1-06-3320-% On Time>10 lines-POTS (82%; 158 orders), (3) OR-2-04-3200-% On Time Rejects <10 lines-Specials (83%; 123 orders). Dowell/Canny Declaration, BA-NY Application, Appdx. A, Vol. 1, Tab 1 at Tab D.

orders, to a market adjustment of $500,000 per month ($24 million/year aggregate) if performance does not meet the secondary target of 90%. (This is in addition to the Mode of Entry weightings already associated with these measures in the Performance Assurance Plan.) In addition, Bell Atlantic-NY has committed to increase the percentage of orders that flow through its OSS, as discussed below, and to subject that commitment to an additional market adjustment of $10 million/year.

KPMG determined that Bell Atlantic-NY satisfied each of the criteria relating to order functionality,[1] LSRC response times,[2] the provision of "clear, accurate and complete" LSRCs,[3] and system error message response times.[4] With regard to LSRC response times, for example, KPMG received 96% and 92% of responses in a timely fashion for flow-through LSRs, and 97.6% timely during normal and peak volume testing.[5]

Overall, Bell Atlantic-NY's performance in providing confirmations and rejects in a timely and accurate manner enables mass market entry by competitors. In addition, the company's performance in providing LSRCs and rejections for manually handled orders is adequate and improving, and Bell Atlantic-NY is taking steps to increase flow-through rates to reduce the number of manual orders.

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1 Criterion P5-8, Satisfied with Qualifications, KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-111.

2 Criterion P5-9, Id., p. IV-112.

3 Criterion P5-10, Satisfied with Qualifications, Id., p. IV-112.

4 Criterion P5-12, Id., p. IV-113.

5 Id., p. IV-112 and Table IV-5.17.

b. Flow-Through

To handle high volumes of orders, it is important that orders flow through without manual handling. In the Pre-Filing Statement, Bell Atlantic-NY committed to increase its flow-through rates, and to flow-through those types of orders listed in Pre-Filing Appendices 2 and 3.[1]

In KPMG's flow-through evaluation, it determined that Bell Atlantic-NY's flow-through was satisfactory. KPMG found that over 99% of the UNEP and Resale transactions that should have flowed through did in fact flow-through; and that 85.5% and 100% of the UNE-Loop transactions that should have flowed through in the functional evaluation and volume stress test, respectively, did so.[2] KPMG also found that Bell Atlantic-NY was able to increase the number of flow-through transactions, with additional transactions added after February 1999.

Two measures have been established to gauge Bell Atlantic-NY's flow-through: percent of overall flow-through (which includes orders not expected to flow-through), and percent of flow-through achieved (of those types of orders designed to flow-through). Bell

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1 BA-NY Pre-Filing Statement (April 6, 1998), BA-NY Application, Appdx. C, Vol. 28, Tab 403. The decision to flow through order types listed in Appendix 3 depends on how frequently those orders are submitted by competitors.

2 Criteria P7-1, 2 and 3, KPMG Final Report version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-160.

Atlantic-NY's current UNE flow-through rate of approximately 60%[1] has suffered by reason of several factors, which are now under discussion in the carrier-to-carrier proceeding and have the been the subject of several recent affidavits. MCI's affidavit generally complains that the flow-through rate is too low for commercial volumes and, based in part on NYDPS Staff's own analysis, attributes the low rate primarily to Bell Atlantic-NY's system design. Of the non flow-through orders, roughly 30% are caused by CLEC errors[2], roughly 46% are designed not to flow-through and the balance are due to system problems.[3]

In its Joint October Affidavit filed with the New York Commission in response to MCI's affidavit, Bell Atlantic-NY commits itself to several steps that should significantly improve flow-through rates. First, after noting that pre-order/order integration should diminish CLEC ordering errors, it agrees to conduct monthly workshops to improve order quality, reduce LSR rejects, and increase flow-through.[4] Second, it commits itself to three

[1] This is the overall UNE flow-through rate for August 1999. Dowell/Canny Declaration, BA-NY Application, Appdx. A, Tab 1 at Tab D. The August achieved flow-through rate for UNE was reported as 73% (OR5-03). This achieved flow through rate excludes only features that are not designed to flow through. No adjustments were made to the achieved rate to exclude CLEC errors or orders that are designed not to flow through for operational reasons (e.g., pending order, BA-NY initiated blocking for customer payment treatment). The achieved flow through metric is being reviewed and refined in the carrier-to-carrier proceeding.

[2] The bulk of errors appears to be due to typographical errors that should be eliminated with the implementation of pre-order/order integration.

[3] MCI Joint Supplemental Affidavit of Fuquay/Sivori (September 17, 1999) BA-NY Application, Appdx. C, Vol. 63, Tab 997 at ¶ 119.

[4] Bell Atlantic-NY Joint October Reply Affidavit of Messrs. Miller, Sullivan and Zanfini at ¶¶ 8-9.

groups of system changes:[1] Phase I changes, which could be made by the end of October; Phase II changes, which could be made by the end of 1999; and Phase III changes, which have a target implementation date of February 2000.

Based on Bell Atlantic-NY's affidavit and NYDPS Staff's independent analysis and evaluation of these improvements (and the current volumes of non flow-through orders associated with the Bell Atlantic-NY improvement commitments), NYDPS believes the current overall UNE flow-through rate can be increased as follows: Phase I changes: 18 percentage points; Phase II changes: four percentage points; and Phase III changes: eight percentage points. Taken together, these improvements should increase the overall flow-through rate from 60% in August to approximately 80% by the end of 1999 and close to 90% by the second quarter of 2000.

Based on the foregoing, we find Bell Atlantic-NY's current flow-through rates are sufficient to handle current volumes. Further, its operations are scalable and it plan to meet the UNE flow-through rate of either 80% overall or 95% achieved, as defined in the carrier-to-carrier proceeding or face market adjustments, is reasonable.

6. Integration

Integration, the transfer of customer information directly from a pre-order inquiry to an LSR, is important in facilitating mass-market entry by competitors. Bell Atlantic-NY undertook, in the Pre-Filing Statement, to make its interfaces "fully integratable."[2]

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1 Id., ¶¶ 12-14.

2 BA-NY Pre-Filing Statement (April 6, 1998), BA-NY Application, Appdx. C, Vol. 28, Tab 403, p. 28.

KPMG and several CLECs have been able to successfully integrate their pre-ordering and ordering interfaces. KPMG achieved integration by building a "logical interface" to account for differences between the EDI-9 pre-ordering interface and the EDI-8 ordering interface.[1] One CLEC, CTC, uses its own system to bridge to two OSS interfaces, by downloading pre-order information and then populating its LSRs.[2] Another CLEC obtains pre-ordering information via EDI-9 and populates EDI-8 LSRs, while AT&T obtains pre-ordering data via CORBA to populate EDI-8 LSRs. Both of these latter CLECs have been able to integrate for both Customer Service Record (CSR) and Address Validation functionality.

Based on the foregoing, we conclude that Bell Atlantic-NY has met the requirement that it provide fully integratable pre-ordering and ordering interfaces.

7. Provisioning

In the OSS context, provisioning refers to Bell Atlantic-NY's ability to provide accurate and timely completion notices.[3] In its evaluation, KPMG determined that Bell Atlantic-NY provided 99% of its completion notices by noon on the business day following

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1 KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 6 a-c, Tab 916, pp. IV-119-20.

2 Affidavit of M. Donnellan (June 17, 1999), BA-NY Application, Appdx. C. Vol. 51, Tab 783; Minutes of Technical Conference held June 10, 1999, BA-NY Application, Appdx C, Vol. 50, Tab 767, Transcript p. 2679.

3 Other aspects of provisioning, such as on time completion, are analyzed in the context of each particular checklist item, *infra*.

completion in Bell Atlantic-NY's billing system (CRIS).[1] KPMG also found that fewer than 1% of the 3,000 completion notices received lacked complete information.[2] Finally, KPMG concluded that Bell Atlantic-NY performs provisioning activities accurately and within the timeframes identified on the order confirmation, and that the CSRs are updated appropriately after completion of the CLEC order.[3]

Bell Atlantic-NY's reported performance in delivering completion notices is 100% on time for both July and August 1999.[4] Several parties complain, however, that Bell Atlantic-NY measures its performance from the time an order is marked "complete" in its billing system to the time the completion notice is sent, instead of starting to count when the work is physically completed. Bell Atlantic-NY has responded to this concern by distributing completion notices following completion of the physical work and entry of the completion into the Service Order Processor.[5]

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1 KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, pp. IV-114-115. KPMG notes, however, that it did not receive completions for approximately 10% of completed orders, primarily in January 1999, but that Bell Atlantic-NY has since addressed this issue.

2 Id., p. IV-116.

3 Id., p. IV-118.

4 Dowell/Canny Declaration, BA-NY Application, Appdx. A, Vol. 1, Tab 3, p. 19.

5 Id., p. 20 and Miller/Jordan Declaration, BA-NY Application, Appdx. A, Tab 2, p. 22. The NYPSC's carrier-to-carrier proceeding is in the process of developing a performance measure and standard for delivery of this completion notice.

Although an evaluation criterion relating to provisioning metrics (POP8-3.5) was deemed "not satisfied" because completion intervals were out of parity,[1] we find the remaining unexplained difference of a half day does not warrant a conclusion that Bell Atlantic is offering discriminatory service.[2]

8. POP Conclusion

In light of the foregoing, we conclude that Bell Atlantic-NY performs its pre-ordering, ordering and OSS provisioning activities in a nondiscriminatory manner.

C. Maintenance and Repair (M&R)

Maintenance and Repair (M&R) OSS are necessary to allow CLECs to service customers' lines in accordance with the NYPSC's end user service standards,[3] such as those requiring service to be repaired within 24 hours, and appointments with customers to be kept. The KPMG test examined all aspects of M&R OSS provided by Bell Atlantic-NY to CLECs.

The M&R OSS provided by Bell Atlantic-NY, called the Repair Trouble Administration System (RETAS), is a world-wide-web-based interactive system that allows a CLEC customer service representative, upon receiving a report of trouble from a customer, to test the line and, if appropriate, arrange for a Bell Atlantic-NY technician to repair the

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1 KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-202.

2 Similarly, the "not satisfied" for Help Desk telephone numbers not being listed in business rule documents, or table of contents or index within documentation (POP 9-16), does not raise a material issue. Help Desk telephone numbers were provided, and CLECs have the capacity to make their own lists. Id., pp. IV220-221.

3 Parts 602 and 603 of 16 NYCRR.

problem. RETAS will also allow the CLEC to monitor work on the trouble report and learn when the problem is corrected.

KPMG evaluated RETAS, overall M&R process, RETAS system documentation, M&R performance experienced by CLECs, and coordination between Bell Atlantic-NY and CLEC personnel when necessary to restore service to customers. KPMG tested the functionality of RETAS and its ability to handle large volumes of trouble reports, and assessed parity between RETAS and the system used by Bell Atlantic-NY's retail representatives. Overall, KPMG evaluated 192 criteria in M&R and found all of them to be satisfied or satisfied with qualifications. It found that the RETAS system provided the CLECs adequate performance.

For UNEP customers, KPMG had initially found--in exception 38--that CLECs were not able to create a trouble report on an account for up to 56 hours after becoming the local service provider of record. This delay resulted from lags in updating Bell Atlantic-NY systems necessary to support RETAS. As a result, Bell Atlantic-NY developed a method by which CLECs can now immediately open trouble tickets on recently completed service orders. KPMG tested the new method and found it to be adequate.[1]

KPMG also found that Bell Atlantic-NY needed to improve the instructions provided to CLECs for operating the RETAS system. Bell Atlantic-NY made improvements to the documentation and agreed to provide additional instructions, and routine updates, to all CLECs using the RETAS system.

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[1] KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, Table V5.4, M5-1.

For trouble reports related to unbundled local loops, KPMG found--in exception 35--a general lack of coordination between Bell Atlantic-NY and CLECs that resulted in a lack of parity for M&R. Bell Atlantic-NY was requiring CLECs to direct repair technicians to either the outside plant or central office. If the directions provided were incorrect, and therefore no trouble was found, Bell Atlantic-NY would close the trouble ticket even if the customer was not back in service. Upon closing the ticket, Bell Atlantic-NY would not notify the CLEC, so that customers could potentially remain out of service for long periods. To effect repair, the CLEC would be required to open a second trouble ticket.

In response to KPMG's findings, Bell Atlantic-NY observed that when its own technicians were dispatched in error, it took longer to clear trouble tickets, and that the CLECs were in fact receiving parity treatment. Bell Atlantic-NY has agreed to measure trouble tickets in a manner that would allow an accurate assessment of parity for troubles requiring dispatch. In addition, to address concerns that CLECs were not notified when initial trouble tickets were closed, Bell Atlantic-NY agreed in the carrier-to-carrier proceeding to notify CLECs any time a trouble ticket was closed.

At the technical conferences, AT&T and MCI Worldcom raised issues related to delays in creating trouble reports and to the need for two trouble tickets to deal with misdirected dispatches. The measures taken by Bell Atlantic-NY, discussed in the preceding paragraph, adequately resolve these concerns.

Access to Bell Atlantic-NY's maintenance and repair interface is measured in terms of response times. The response time measures are currently under review in the carrier-to-carrier proceeding; and it appears that parties generally agree that the existing absolute standards need to be modified.[1] Because KPMG transactions did not measure all transaction processing steps (e.g., did not include time to process transaction in the OSS) they are not representative of real world CLEC experience. In addition, the metric that captures response times for the creation of CLEC troubles measures two processes, whereas the retail measure involves only one process. Accordingly, the measure is being revisited in the carrier-to-carrier proceeding.

Overall, the average response times for June and July for all functions (create trouble, modify trouble, request cancellation of trouble, and test trouble (POTS only)) were only 1.25 seconds and 5.21 seconds longer, respectively, for CLECs than for Bell Atlantic-NY.

Based on KPMG's review and evaluation and our evaluation of Bell Atlantic-NY's maintenance and repair performance, we find that CLECs have nondiscriminatory access to Bell Atlantic-NY's maintenance and repair systems.

D. Billing

KPMG evaluated Bell Atlantic-NY's wholesale billing systems, processes, and operational support. KPMG assessed Bell Atlantic-NY's compliance with OSS measurement agreements, the accuracy of billing information provided to CLECs, and Bell Atlantic-NY's ability to provide required support for CLEC billing operations. Six different tests were conducted, evaluating 287 different test points; 81% of the tests were Satisfied (including 19% Satisfied after Exceptions were Resolved), and 19% were Satisfied with Qualifications.

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[1] Based on response times experienced by KPMG during testing.

Seven different bill types were tested in eight different bill cycles, and over 2,100 test calls were made to generate usage records.

In briefs to the NYPSC, AT&T and the Telecommunications Resellers Association claimed that Bell Atlantic-NY continues to provide inaccurate billing data. KPMG noted, however, that the types of error rates that it saw in Bell Atlantic-NY's bills were consistent with Bell Atlantic-NY's relative inexperience in providing wholesale billing. Based on its analysis, KPMG testified that it closed out the billing exceptions because the status of Bell Atlantic-NY's billing abilities would have no material adverse affect on the CLECs' ability to do business.

Three metrics are associated with the billing domain: (1) Timeliness of Daily Usage Feed (DUF), with a standard of 95% delivered within four business days, (2) Timeliness of Carrier Billing, with a standard of 98% delivered within 10 business days, and (3) Billing Accuracy, for which no standard has yet been adopted. Bell Atlantic-NY's performance for August, 1999[1] was 99.60% and 99.54%, for DUF and carrier billing timeliness respectively, well above the standards, and billing accuracy of 98.33%.

Based on KPMG's analysis, and in light of the performance data, we find that Bell Atlantic-NY provides access to its billing in a nondiscriminatory manner.

E. Relationship Management and Infrastructure

In the Relationship Management and Infrastructure (RMI) domain, KPMG evaluated Bell Atlantic-NY's processes for establishing and maintaining its relationships with CLECs.

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1 Dowell/Canny Declaration, BA-NY Application, Appdx. A, Tab 3, p. 97.

KPMG conducted 10 tests which evaluated 124 test points. Overall, 116 of the 124 RMI evaluation criteria were satisfied, while another 6 were satisfied with qualifications. One criterion (R10-7) was found to be not applicable. Only one RMI test criterion (timely distribution of documentation) remained "not satisfied" in KPMG's Final Report of August 6, 1999.

KPMG issued Exceptions in 3 RMI areas: (1) Change Management, (2) Interface Management, and (3) Network Design Request, Collocation and Interconnection Planning. With the exception of the timely distribution of documentation, all of these issues were addressed by Bell Atlantic-NY through the introduction of new procedures, processes, and systems; and KPMG has resolved and closed the respective exceptions.

KPMG's major concerns in the RMI domain were with Change Management and Interface Management.

1. Change Management

Change Management is the process by which the CLECs and Bell Atlantic communicate about software and process changes to the OSS interfaces. It addresses the development of, and adherence to, stable business functions and system operations for scheduling, communicating and managing changes that affect OSS interfaces.

KPMG evaluated critical parts of the change management process to determine compliance with notification and documentation guidelines and the tracking and logging of change requests. Of eight evaluation criteria relating to change management that were tested, KPMG determined four were satisfied: process responsibilities were clearly defined; essential elements were in place and adequately documented; procedures were in place allowing input from all; and criteria for prioritization and severity coding were defined. Of the remaining four criteria, the two criteria relating to: (1) the categorization and prioritization of changes, and (2) tracking procedures were satisfied with exception resolved. One criterion relating to notification intervals was satisfied with qualifications (notice procedures had defined and reasonable time intervals), and one criterion (R1-6, relating to timely documentation of interface changes) was not satisfied.

KPMG concluded that notification and documentation intervals for the five types of changes--emergency, regulatory, industry-initiated, Bell Atlantic-NY-initiated, and CLEC-requested--were clearly defined.[1] Given that Bell Atlantic-NY met the notification interval requirements most of the time, KPMG concluded that the change management process for notifying CLECs about proposed changes had been satisfied with qualifications. However, as detailed below, KPMG concluded that Bell Atlantic-NY needed to: (1) improve tracking of change requests, (2) reduce notification delays, and (3) reduce delays in distribution of documentation.

KPMG's review of Bell Atlantic-NY change releases from January through June 1999 noted the following concerns regarding Bell Atlantic-NY's performance in documenting changes: established intervals for distributing Bell Atlantic-NY-initiated changes (Type 4 releases) were not consistently met; the schedule for change items was adjusted without

[1] In general, BA-NY must provide notification of an interface change 66 days before implementation and final documentation of changes 45 days before implementation.

notification; and it was not clear whether amended documentation was subject to the 45-day interval for final documentation.[1]

Although the Change Management Process establishes required time intervals for providing "final documentation" of changes--e.g. final documentation is to be provided 45 days before the release of a Bell Atlantic-NY-initiated change (Type 4)--KPMG observed that when the documentation is amended after implementation of the change or during the testing period, it is not clear whether it is final and, therefore, subject to the interval requirements. KPMG suggested a need to clarify what "final documentation" consists of.

On the basis of (1) KPMG's review of Bell Atlantic-NY's change management documentation tracking procedures; (2) clarifications regarding RETAS documentation being subject to interval requirements and regarding the need to provide final documentation; and (3) Bell Atlantic-NY's agreement to have the foregoing commitments enforced through the Change Control Assurance Plan, we conclude that Bell Atlantic-NY delivers change control notice and documentation in a timely manner.

First, Bell Atlantic-NY has undertaken to subject RETAS documentation to interval requirements and to provide direct distribution of all such documentation via the Industry Change Control distribution list.[2] Second, Bell Atlantic-NY's performance regarding timely delivery of notification and documentation for June 1999 was 89% and for August 1999 it

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1 In response to these findings, Bell Atlantic-NY stated that change control items related to RETAS (Retail Trouble Administration System), were not subject to Change Management Process interval requirements.

2 BA-NY's Second July Update Affidavit (July 22, 1999), BA-NY Application, Appdx. C, Vol. 54, Tab 853, p. 14, ¶ 34.

was 77%. Bell Atlantic-NY missed one of eight notification intervals and two of eight documentation intervals (No notification or documentation subject to the timeliness measure was issued in July.) Bell Atlantic-NY's commitment to the Change Control Assurance Plan makes its adherence to documentation intervals enforceable by subjecting it to up to $500,000/month for notification and documentation delivery that is less than 90% timely.[1] In addition, a $25,000/day market adjustment applies to any document that is delayed more than seven days.[2] Finally, although Bell Atlantic-NY missed one of eight notification intervals and two of eight documentation intervals for type 4 changes released in August 1999, the measure for timeliness of change management notice and documentation that is part of the Change Control Assurance Plan requires that documentation be considered available (and final) only when all material changes are made.[3] Therefore, the measurement will require that Bell Atlantic-NY provide complete documentation consistent with the required intervals.

2. Interface Management

The Interface Management test evaluated adherence to testing protocols for certification testing and new software releases. Bell Atlantic-NY requires CLECs to be "certified" prior to their obtaining direct access to the Bell Atlantic-NY OSS production environment. Without clearly defined certification guidelines, CLECs could experience delay

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1 BA-NY's Petition for Approval of Amended Performance Assurance Plan (September 24, 1999), BA-NY Application, Appdx. I, Vol. 3, Tab 25 (P0-4-01).

2 Id. (P0-4-03).

3 Dowell/Canny Declaration, BA-NY Application, Appdx. A, Tab 3, Attachment B (New York State Carrier-to-Carrier Guidelines Performance Standards and Report, p. 11 [PO-4]).

entering the marketplace. Further, an adequate testing environment is essential if CLECs are to be able to satisfy themselves that they have coded their systems properly and that the transactions sent or received are in the proper format for integration into the CLEC's internal systems.

KPMG issued two exceptions relating to the interface management area of RMI: the OSS interface test environment (identified in the KPMG Report as QA Testing Environment) and certification (identified in the KPMG Report as Procedures and Specifications for carrier-to-carrier testing). Based on further evaluation, KPMG concluded, however, that both criteria had been satisfied with qualifications, exception addressed.

3. Testing Environment

The qualification regarding testing was due to KPMG's inability to evaluate a then-undeveloped new test environment solution (the "September" or "Permanent" solution). KPMG did validate and verify the adequacy of the interim test environment and the general approach of Bell Atlantic-NY's permanent solution.[1]

After finding that Bell Atlantic-NY "...[did] not provide a carrier-to-carrier testing environment for electronic data interface (EDI) that adequately resembles its production environment," KPMG issued exception 21 for this criterion. Among the problems identified was the use of a different version in the QA testing environment than was used in production. This difference in software versions can result in CLEC transactions succeeding in the QA testing environment but failing in production.

[1] KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, Test R2-9, RMI-2 VII27.

In response to concerns about the adequacy of the test environment, Bell Atlantic-NY, after working with Staff and CLECs, established test procedures. The test procedures provide for the availability of a test environment that mirrors production, a baseline validation test deck,[1] procedures to supplement the baseline test deck with test account data so CLECs can test transactions of their choice,[2] and protocols for identifying and resolving issues during testing. Bell Atlantic-NY also established in September 1999 a testing environment dedicated to CLECs that mirrors the production environment.[3]

KPMG reviewed the documentation for the new testing environment and verified the procedures by testing their operation during the May 1999 software release and observing their operation during the June release. Although KPMG could not test the permanent environment, it determined that a consistent framework for testing had been established.[4]

Although CLECs experienced some difficulties during the May and June new release testing, it appears that those problems were in substantial part due to their lack of familiarity with the newly established testing procedures, including the utilization of test accounts.[5]

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1 The test deck is a compilation of transactions designed to test whether a new release produces expected results.

2 Both the baseline validation test deck and the progression test deck were made available to CLECs on the BA-NY Telephone Industry Services (TIS) homepage.

3 The September 1999 environment makes additional computer hardware available for CLEC testing and will allow CLEC new release testing time to be expanded for a week to 30 days.

4 KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, Test R2-9, RMI-2 VII27; July 28, 1999 Technical Conference, BA-NY Application, Appdx. C, Vol. 57, Tab 885, Transcript pp. 3471-72.

5 July 28, 1999 Technical Conference, Id. Supra note 89 Transcript pp. 3470-3471.

4. Certification Testing

KPMG also issued an exception relating to CLEC certification in the interface management area. Before CLECs can obtain direct access to Bell Atlantic-NY's production environment, they must be certified by Bell Atlantic-NY. KPMG noted the absence of documentation for requirements and conditions necessary to certify that a CLEC may move from the testing environment to the production environment.

In response to the certification issue, Bell Atlantic-NY issued new procedures in May 1999.[1] KPMG then reviewed, validated and verified these procedures and specifications and used them to test Bell Atlantic-NY's May, 1999 software release. Bell Atlantic-NY also issued a Test Plan outlining steps used for carrier-to-carrier test planning and implementation. KPMG determined the proposed and implemented planning process was adequate, resolving the criterion as "satisfied with qualifications, exceptions addressed."[2]

CLECs had complained about the quality of documentation that Bell Atlantic-NY had released regarding the business rules and specifications associated with the OSS interfaces. To address that concern, a metric was developed to monitor the quality of documentation issued by Bell Atlantic-NY. That metric (P0-6-01 "Software Validation") measures the

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1 Bell Atlantic-NY Interim Procedures for CLEC New Entrant Testing (May 1999-September 1999) and Interim Procedures for CLEC New Release Testing (May 1999-September 1999).

2 KPMG also has two EDI Certification evaluation criteria (PR-1 relating to certification processes and PR-2 relating to establishing a stable testing environment). These criteria were "not satisfied" because, although they were addressed in the broader context of RMI, the evaluation result for PR-1 and PR-2 was based on KPMG's experience during its own certification testing early in its evaluation. KPMG Final Report Version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, pp.IV-17-18, Table IV 1-9.

percent of commonly used test transactions that achieve expected results, i.e., pass.[1] The purpose of the test deck is to ensure that the software releases work as documented.[2]

Finally, CLECs had complained about the limited time available for software testing (five days). Bell Atlantic-NY's new testing environment addresses this concern by providing for 30 days of CLEC testing.

5. Other Concerns

In response to concerns raised by CLECs, Bell Atlantic-NY, in consultation with CLECs and the NYDPS Staff, established (1) an escalation process for resolving change control disputes and (2) a process for getting CLEC input in the monthly Industry Change Control agendas. The Change Control Escalation Process involves an appeal to Bell Atlantic-NY upper level management and allows CLECs to bring the issue to the NYDPS. The Escalation Procedure[3] will be incorporated in the Bell Atlantic-NY Change Control Process document during its next revision, and Bell Atlantic-NY has also listed these escalation procedures on its Telecom Industry Services (TIS) page.[4] Getting CLEC input into agendas,

1 Declaration of Miller/Jordan, BA-NY Application, Appdx. A, Vol. 2, Tab 2, p. 48, ¶ 109, notes that the August Change Control Software Metric was .6% failed transactions. This figure is within the parameters of the metric. However, it should be noted that this figure is not included in BA-NY's reported metrics Joint Declaration of Dowell/Canny, BA-NY Application, Appdx. A, Vol. 3, Tab D, p. 96. (BA-NY lists the metric as under development (UD)).

2 The test deck is run by BA-NY at the start of the QA environment and at the completion of QA environment as well as being run in production. Running the test deck in production ensures that the two environments, QA and production, match.

3 See (www.bellatlantic.com/tis/sup-doc.htm).

4 BA-NY's TIS web page (www.bellatlantic.com/tis/resources.htm) provides resources and contacts for CLECs at Bell Atlantic North and Bell Atlantic South.

and another concern that had been raised--parity between changes initiated by CLECs and those initiated by Bell Atlantic-NY--can be addressed through the Escalation Process.

In addition to developing new software release and certification testing procedures and the "September Solution," Bell Atlantic-NY filed a Change Control Assurance Plan (CCAP) in response to concerns raised by KPMG and CLECs regarding its ability to manage changes to the OSS interface. The CCAP calls for Bell Atlantic-NY to put $25 million at risk if it provides unsatisfactory service for four measures: notification of changes, timeliness of notice, software release quality, and hour delays.[1] In addition, under the PAP the PSC may reallocate funds to increase the amount of money at risk for failure to meet performance standards. The CCAP's software validation measure (PO-6-01) requires 90% of the test deck transactions to be completed successfully in order to avoid $1 million of market adjustments. This enforcement mechanism provides strong incentives for Bell Atlantic-NY to produce quality documentation, for the test deck transactions flow from and must conform to the documentation.

Based on KPMG's evaluation of the testing procedures, together with the implementation of the permanent testing environment[2] and the CCAP, NYDPS finds Bell Atlantic-NY's interface management procedures to be adequate to ensure proper functioning of the OSS.

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1 Definitions for timeliness in the CCAP include releases with standard intervals only and exclude changes such as emergency changes (Type 1) and new functionality releases (Type 4).

2 The new test environment was made available for CLECs on September 20, 1999, but to date no CLECs have tested any transaction.

6. RMI Conclusion

Based upon the foregoing, we conclude that Bell Atlantic-NY has in place appropriate processes for establishing and maintaining Bell Atlantic-NY/CLEC relationships.

III. OSS Findings

Bell Atlantic-NY currently provides nondiscriminatory access to the OSS pursuant to interconnection agreements and tariffs.[1] Based on the foregoing evaluation, we find Bell Atlantic-NY is in compliance with checklist item (ii), the obligation to provide nondiscriminatory access to Bell Atlantic-NY's OSS.

NETWORK ELEMENT COMBINATIONS

I. The Legal Standard

A. The 1996 Act

When Pre-Filing Statement commitments were undertaken by BA-NY, the prevailing law was that Bell Atlantic-NY was not obligated to supply existing combinations of elements. In the Pre-Filing Statement, however, Bell Atlantic-NY voluntarily undertook to provide network element combinations, including the platform, under conditions that the NYDPS

[1] Declaration of LaCouture/Troy, BA-NY Application, Appdx. A, Tab 1, pp. 2-3.

viewed and still views as consistent with the circumstances of the development of the competitive local exchange market in New York State.[1]

B. State Application of Legal Standards

In the Pre-Filing Statement, Bell Atlantic-NY agreed to provide competitive LECs combinations of elements less than the total platform in all geographic areas, for all classes of service, and at no additional charge. Bell Atlantic-NY also agreed to provide the complete UNE platform for residential and business POTS and Basic Rate Interface ISDN (BRI ISDN) services. For service to residential customers, this offering would be available at no additional charge for four years in New York City and for six years elsewhere.[2] In addition, in central offices in New York City where two or more competitive LECs are collocated to provide local exchange service through unbundled links, UNEP will not be available to serve business customers.

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[1] The negotiating parties were well aware of the changing legal climate. The Pre-Filing Statement includes Bell Atlantic-New York's undertaking to keep its commitments, assuming preconditions are met, "unless they are found to violate law by any court of competent jurisdiction." BA-NY Pre-Filing Statement (April 6, 1998), BA-NY Application, Appdx. C, Vol. 28, Tab 403, p.2. With respect to combinations of elements, BA-NY "realize[d] that this document does not immunize it from having to comply with valid FCC regulations." Id., p.8.

[2] The BA-NY Pre-Filing Statement provided that to serve business customers in New York City, voice-grade service would be available at a $6 monthly charge for four years and BRI-ISDN service would be available at no additional charge for four years. To serve business customers elsewhere, voice-grade service would be available at a $2 monthly charge for six years and BRI-ISDN at no additional charge for six years. BA-NY subsequently withdrew these charges. Minutes of Oral Argument Held August 31, 1999, BA-NY Application, Appdx. C, Vol. 68, Tab 989, Transcript p. 4214.

These provisions reflected the NYDPS's analysis of local competition in New York: its prevalence within New York City, the availability of competitive choice for business customers, the presence of facilities-based competition, and the relative lack of such choice for residential customers and most customers outside New York City.

Following the litigation of a broad range of methods for accessing and combining network elements, in NYPSC Cases 98-C-0690 and 95-C-0657, the NYPSC in November 1998 issued an opinion modifying and approving various alternative collocation methods, in conjunction with the Bell Atlantic-NY offering of UNEP and lesser combinations under the terms of the Pre-Filing Statement.[1] The NYPSC adopted a menu of methods, including physical collocation (traditional, small cage, and shared cage); shared space with escort; identified space; virtual collocation; and assembly room and assembly point. The NYPSC made clear that these variations on the collocation theme were sufficient because they were offered in conjunction with the availability of UNEP and lesser combinations under the Pre-Filing Statement. Bell Atlantic-NY filed tariff revisions to its collocation offerings to conform to the NYPSC determination.[2]

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[1] Cases 98-C-0690 et al., Opinion No. 98-18, Opinion and Order Concerning Methods for Network Element Recombination (issued November 23, 1998), BA-NY Application, Appdx. D, Vol. 6, Tab 121.

[2] On December 18, 1998, Bell Atlantic-NY filed its tariff offering these methods of network element combination; the NYPSC approved the tariff, with the proviso that the examination of Bell Atlantic-NY's actual market provisioning of these collocation methods for network element combination purposes would take place in the §271 proceeding. Bell Atlantic-NY's collocation provisioning is analyzed in Checklist item (i). With the issuance of the FCC Advanced Services Order, specifying terms and conditions for collocation and eliminating barriers to competition, Bell Atlantic-NY modified its tariff accordingly; the NYPSC approved the modified tariff.

In AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999), the United States Supreme Court, among other things, reversed the Eighth Circuit with respect to the vacatur of FCC rule 315(b), the prohibition against the incumbent LEC separating requested network elements that are currently combined. In light of this holding, the NYPSC reexamined Bell Atlantic-NY's platform and collocation offerings to ensure they comply. Specifically at issue were the AT&T v. Iowa Utilities Bd., 525 U.S. 366 (1999), holdings with respect to network element pricing and Rule 315(b) UNEP and combinations. The vacatur of Rule 319 left states without federal regulatory parameters governing what minimum list of elements must be made available by incumbents to competitors. In that vacuum, NYPSC approved Bell Atlantic-NY's compliance tariff filing for UNEP and the Bell Atlantic-NY tariff offering of collocation methods, in conjunction with UNEP on the terms and conditions of the Pre-Filing Statement, finding that this range of options provided those elements necessary for competition and that they would allow--and not impair-- competitors' market entry.

Finally, the recent FCC determination concerning Rule 319, upon remand from the Supreme Court, appears to remove local switching from the list of obligatory network elements in certain circumstances. This element is, of course, encompassed in the UNEP Bell Atlantic-NY is committed to providing under the Pre-filing Statement. With regard to providing competitors combinations of elements or the independent ability to combine them, the Bell Atlantic-New York commitment is a set of binding legal obligations pursuant to the terms and conditions in the Pre-Filing Statement, subsequently incorporated into tariffs and interconnection agreements with one competitive LEC, AT&T.[1]

Following the FCC Collocation Order, Bell Atlantic-NY again revised its tariff to reflect that order. Bell Atlantic-NY now states it will conform its offerings to any subsequent FCC order.[2]

III. Findings

In Opinion No. 98-18, the PSC required Bell Atlantic-New York to provide competitors with every currently available method to recombine elements, and to provide competitors with broad access to the full platform and to other element combinations. Bell Atlantic-NY does not rely exclusively on the collocation-based methods of network element combination, as lesser combinations and the UNEP are also offered. Moreover, the range of collocation-based options made available by Bell Atlantic-New York is a broad one, and was developed based on the competitive LECs' concrete proposals, interests and input. In addition, Bell Atlantic-NY will comply with future FCC collocation or recombination requirements. In this proceeding, Bell Atlantic-New York has demonstrated the availability and efficacy of these offerings in the marketplace.

Bell Atlantic-NY's performance demonstrates that competitors have nondiscriminatory access to combinations of elements. For the metrics that deal specifically with platform performance (% missed appointment-BA-dispatch-platform, and % missed appointment-BA-no

[1] Case 96-C-0723, Order Approving AT&T Best and Final Offer (issued January 5, 1999).

[2] Pre-Filing Statement, BA-NY Application, Appdx. C, Vol. 28, Tab 403, p. 8.

dispatch-platform) Bell Atlantic-NY passed both in August as well as in July. In addition, although one measure (% completed within 5 days (1-5-lines-no dispatch)-UNE-P/other) failed in August, our analysis suggests that, among other things, because CLECs sometimes request an installation date that is longer than the standard installation intervals, the metric performance is not a precise indicator of Bell Atlantic-NY's ability to provide platform orders consistent with the standard intervals.[1]

Based on the foregoing, we conclude that Bell Atlantic-NY is providing element combinations in a nondiscriminatory manner consistent with requirements of Checklist item (ii).

[1] The record before the NYDPS does not suggest that CLECs have been having problems receiving intervals for platform orders as requested or within the standard intervals set forth in the carrier-to-carrier guidelines. MCI WorldCom acknowledged that because it requested longer intervals for certain UNEP products, BA-NY's overall average interval offered and completed metrics may be longer than they otherwise would be. MCI Brief at p. 13. Moreover, BA-NY's good missed appointment performance demonstrates that it is meeting requested intervals.

Checklist Item (iii): Access to Poles, Ducts, Conduits and Rights-of-Way

I. Legal Standard

A. The 1996 Act

Section 271(c)(2)(B)(iii) requires a BOC to provide "[n]on discriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of §224."[1] Section 224, in turn, requires a utility to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."

Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State."[2]

B. State Application of Legal Standards

The NYPSC has had jurisdiction over attachments to utility poles and use of utility ducts, trenches and conduits since 1978. New York State Public Service Law §119-a provides that "[the NYPSC] shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits."

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1 47 U.S.C. §271(c)(2)(B)(iii).

2 47 U.S.C. §224(c)(1).